

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

LOPEZ McCRAY,

Appellee

v.

LAWRENCE STREET ASSOCIATES, LLC,
IS LAWRENCE STREET, ISAF, LP, AND
SHERMAN TOPPIN REAL ESTATE, LLC,

APPEAL OF: SHERMAN TOPPIN REAL
ESTATE, LLC,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Mccray Vs Lawrence Street Associates Etal-APORA



No. 1055 EDA 2013

Appeal from the Judgment entered on March 5, 2013
in the Court of Common Pleas of Philadelphia County,
Civil Division, No. 110402634 April Term 2011

BEFORE: FORD ELLIOTT, P.J.E., WECHT and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED APRIL 15, 2014

In this slip-and-fall action, Sherman Toppin Real Estate, LLC ("STRE")
appeals from the Judgment¹ entered against it and Lawrence Street

¹ STRE purports to appeal from the Order denying its Post-Trial Motion challenging the verdict entered against it. However, this Court has stated that "[a]n appeal from an order denying post-trial motions is interlocutory. Pa.R.A.P. 301(a), (c), and (d)[.]" **Keystone Dedicated Logistics, Inc. v. JGB Enters.**, 77 A.3d 1, 2 n.1 (Pa. Super. 2013) (brackets, ellipses, internal quotation marks and citations to case law omitted). In the instant case, the trial court's docket reflects that Judgment was entered against STRE on March 5, 2013. Accordingly, we have corrected the caption to reflect that the appeal properly lies from the March 5, 2013 Judgment.

Associates, LLC ("Lawrence Street"),² and in favor of Lopez McCray ("Plaintiff"). We affirm.

The trial court set forth the relevant history underlying this appeal as follows:

Plaintiff lived at 4510 [North] Lawrence Street, Philadelphia ("the Property") in 2009.^[3] On December 19 and 20, 2009, nearly two feet of snow had fallen. STRE sent snow removal crews to the Property. An entity entitled "Sherman Toppin General Contracting" issued invoices for the snow removal; however, the invoices clearly state that [] "STRE ... [d]eployed snow removal crews" STRE was billing for the snow removal service it provided. For that snow removal service, STRE charged – separately from its income as receiver^[4] – \$200 per day. A total of \$400 was billed for snow removal services those two days. STRE's billing invoices provide: "STRE offers professional and dependable Snow Management Services for Commercial and Multi-Family Residential customers." Further, the invoices indicate that STRE "removed snow on all common element entry/exit points, exterior steps, exterior walkways and public sidewalks."

No snow had fallen between December 20 and December 25. On December 25, between 12[:00] a.m. and 1[:00] a.m., Plaintiff used a backdoor to take out his trash. Plaintiff slipped and fell on steps covered with ice and snow leading to a common alleyway. The alleyway was dark. The outside lights had been broken for some time.

² Lawrence Street is not a party to this appeal. Likewise, IS Lawrence Street, and ISAF, LP, are not parties to this appeal because the trial court entered an Order dismissing them from the case prior to trial, and Plaintiff has not appealed this Order. Accordingly, we have corrected the caption to state that the sole appellant in this case is STRE.

³ The Property was owned by Lawrence Street.

⁴ STRE's status as the court-appointed "receiver" of the Property is discussed below.

Plaintiff suffered herniated discs in his neck and back, and a closed-head injury. Plaintiff attempted self-treatment for a month, but the pain and headaches finally caused him to seek medical care. He received medical treatment for 11 months, and was out of work due to the accident for nearly a year. Plaintiff's back has yet to fully recover. He incurred \$7,310 in outstanding medical bills.

Nine months before Plaintiff's fall, an Order of the [Trial] Court dated March 24, 2009 [(hereinafter referred to as the "Receiver Order")] had appointed [] STRE as receiver of the Property owned by Lawrence Street. That [O]rder required STRE to "manage, operate, and preserve" the Property. [Receiver Order, 3/24/09.] The [Receiver] Order also authorized STRE to "employ such firms and persons as are deemed necessary to assist the receiver ... including ... maintenance personnel" and to use funds derived from the [Property] to pay for "needed maintenance, upkeep and repair" [*Id.*] To the extent that STRE acted within the scope of the receivership, the Order immunized STRE from liability for claims related to the Property's management. If STRE acted outside the scope of the receivership, the Order provided no immunity. Specifically, the Order provides that:

If the Receiver shall have acted in accordance with the terms and conditions of this Order, neither the Receiver, nor any of its employees, agents, attorneys, partners, members, officers, or directors, shall have any liability as to any claim, actions or causes of action of any third parties who have or would have claims against the owner of the Premises[,] ... provided however, the Receiver shall be liable for ... actions taken by the Receiver that are not authorized by the terms of this Order.

[Receiver Order, 3/24/09.]

Trial Court Opinion, 6/4/13, at 1-3 (footnotes added; footnotes in original omitted).

Following a procedural history that is not germane to this appeal, on September 12, 2012, the case proceeded to a non-jury trial. Subsequently,

on November 16, 2012, the trial court found in favor of Plaintiff, and against STRE and Lawrence Street, jointly and severally, in the amount of \$25,000. STRE timely filed a Post-Trial Motion,⁵ which the trial court denied. Subsequently, the trial court's Prothonotary entered Judgment against STRE and Lawrence Street in the amount of \$25,000. In response, STRE filed a Notice of Appeal within 30 days of the entry of Judgment.

On appeal, STRE presents the following issues for our review:

1. Whether the trial court erred in finding that [STRE] [] acted outside the scope of its receivership in providing snow removal services for ... the Property[]?
2. Whether the trial court erred in finding [that STRE] is liable to Plaintiff as an independent contractor hired by the Receiver[, i.e., STRE,] for snow removal services, when STRE should be immune from liability because it is the same entity as the Receiver, and is the entity that performed the actual receivership services?

Brief for Appellant at 3 (footnote omitted).⁶ We will address STRE's issues simultaneously.

⁵ Lawrence Street did not join in the Post-Trial Motion, nor did it appear as a party at trial.

⁶ We observe that STRE presents a third claim in the Argument section of its Brief that it did not set forth in its Statement of Questions Presented. Brief for Appellant at 14 (arguing that "STRE should be entitled to [governmental] immunity ... [because] the Receiver is a governmental entity through [its] appointment by the [trial] court."). Based upon this defect, we could find this claim to be waived. **See** Pa.R.A.P. 2116(a) (stating that "[n]o question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby."). Nevertheless, we conclude that this claim patently lacks merit because STRE is not a government entity, nor did it attain the status as a government entity through its appointment by the trial court as the receiver.

An appellate court reviews a challenge to the verdict entered in a non-jury trial according to the following standard:

Our appellate role in cases arising from non-jury trial verdicts is to determine whether the findings of the trial court are supported by competent evidence and whether the trial court committed error in any application of the law. The findings of fact of the trial judge must be given the same weight and effect on appeal as the verdict of a jury. We consider the evidence in a light most favorable to the verdict winner. We will reverse the trial court only if its findings of fact are not supported by competent evidence in the record or if its findings are premised on an error of law.

McEwing v. Lititz Mut. Ins. Co., 77 A.3d 639, 646 (Pa. Super. 2013) (citation omitted).

In its Opinion, the trial court summarized the relevant law regarding court-appointed receivers, and the pertinent provisions of the Receiver Order involved in this case:

A receiver is "the officer, the executive hand, of a court of equity. His duty is to protect and preserve, for the benefit of the persons ultimately entitled to it, an estate over which the court has found it necessary to extend its care." [**Warner v. Conn**, 32 A.2d 740, 741 (Pa. 1943).] It has long been the rule under Pennsylvania law that a receiver is "held to rigid accountability." [**Pa. Eng'g Works v. New Castle Stamping Co.**, 103 A. 215, 217 (Pa. 1918).] As an officer of the court, "[a] receiver has only such powers and authorities as are given him by the court and must not exceed the prescribed limits." [**Cont'l Bank & Trust Co. v. Am. Assembling Mach. Co.**, 38 A.2d 220, 224 (Pa. 1944).] So long as the receiver acts within the scope or authority of the court, the receiver will be paid for his services and immune from liability. However, if the receiver acts independently outside of the scope of court[-]appointed power, the receiver is subject to liability. [**Id.**]

The March 24, 2009 [Receiver] Order outlines the scope of STRE's authority and duty as receiver. Explicit within the

[Receiver] Order is that STRE is immunized from third party claims when acting in its scope as receiver. The [Receiver] Order charges STRE to maintain the Property, and authorizes STRE to employ individuals and entities necessary for that task. STRE removed snow from the Property on December 19 and 20, 2009, *but billed for those services separately from its role as receiver.*

Trial Court Opinion, 6/4/13, at 3 (emphasis added).

STRE argues that “the trial court erred when it found STRE[, as] the Receiver[,] to be acting outside the scope of its receivership when it billed for and provided snow removal services”⁷ because “[t]he [Receiver] Order immunized [STRE] and anyone it hired from third party claims.” Brief for Appellant at 6, 8. We disagree.

The trial court concisely addressed this claim in its Opinion as follows:

Effectively and actually, *STRE, as receiver, hired itself* as an independent contractor to perform snow removal. The invoice states that STRE removed snow from the common areas and entry and exit points of the [Property], and charges for that service. STRE negligently failed to remove snow from the rear common area and exit point of the [Property], the area where Plaintiff fell. Therefore, STRE is liable to Plaintiff as it would have been as a negligent independent contractor hired by the receiver for snow removal.

Trial Court Opinion, 6/4/13, at 3 (emphasis added). We agree with the trial court’s analysis and adopt it herein.

STRE chose to effectively “hire itself” for snow removal, and billed for these services separately from its income generated as receiver. By so doing, STRE acted independently, and outside of the scope of its court-

⁷ STRE maintains that “snow removal is a typical aspect of property management.” Brief for Appellant at 10.

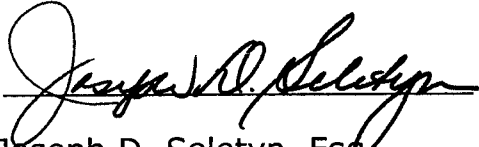
appointed power under the Receiver Order, thus opening itself up to third party liability. ***See id.; see also Cont'l Bank & Trust Co., supra*** (stating that "if the receiver acts independently outside of the scope of court[-]appointed power, the receiver is subject to liability."). Accordingly, STRE is not entitled to immunity under the Receiver Order, despite its argument that "STRE should be immune from [] liability because it is the Receiver, and because it is an entity that performed the actual receivership services." Brief for Appellant at 12. Although property maintenance is within the scope of STRE's role as the receiver, the Receiver Order does not grant immunity to individuals or entities that STRE hired and paid to perform maintenance tasks, even where the hired entity was STRE itself.

STRE further argues that "[w]hen a receiver fulfills its property management responsibilities through the employment of itself, its actions continue to be the actions of the receiver." Brief for Appellant at 12. Initially, we observe that STRE cites to no legal authority in support of this claim, nor does our research reveal any supporting authority. In any event, this claim lacks merit because we have already concluded that STRE's "employment of itself" for snow removal at the Property was not within the scope of the receivership, and, therefore, its negligent actions or omissions regarding snow removal are not immune to third party suits.

Accordingly, we conclude that both of STRE's issues lack merit, and we therefore affirm the Judgment entered against it and in favor of Plaintiff.

Judgment affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/15/2014

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1055 EDA 2013

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May 27, 2014



CAPTION

Lopez McCray
v.
Lawrence Street Associates, LLC,
and
IS Lawrence Street
and
ISAF, LP
and
Sherman Toppin Real Estate, LLC
Appellant

CASE INFORMATION

Initiating Document: Notice of Appeal
Case Status: Closed
Case Processing Status: May 27, 2014 Completed
Journal Number: J-A30036-13
Case Category: Civil Case Type(s): Civil Action Law

CONSOLIDATED CASES

RELATED CASES

SCHEDULED EVENT

Next Event Type: Next Event Due Date:

COUNSEL INFORMATION

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REMITTED

MAY 27 2014

**SUPERIOR COURT
OF PA**

Appeal Docket Sheet**Superior Court of Pennsylvania****Docket Number: 1055 EDA 2013****Page 2 of 4****May 27, 2014****FEE INFORMATION**

| Fee Dt | Fee Name | Fee Amt | Receipt Dt | Receipt No | Receipt Amt |
|------------|----------------------|---------|------------|-------------------|-------------|
| 03/28/2013 | Notice of Appeal | 73.50 | 04/17/2013 | 2013-SPR-E-000676 | 73.50 |
| 06/26/2013 | Copy Work (Per Page) | 125.00 | 06/26/2013 | 2013-SPR-E-001120 | 125.00 |

AGENCY/TRIAL COURT INFORMATION

Court Below: Philadelphia County Court of Common Pleas
 County: Philadelphia Division: Philadelphia County Civil Division
 Order Appealed From: February 28, 2013 Judicial District: 01
 Documents Received: April 17, 2013 Notice of Appeal Filed: March 28, 2013
 Order Type: Order
 OTN(s):
 Lower Ct Docket No(s): 110402634, April Term, 2011
 Lower Ct Judge(s): Bernstein, Mark I.
 Judge

ORIGINAL RECORD CONTENT

| Original Record Item | Filed Date | Content Description |
|----------------------|---------------|---------------------|
| Record | June 13, 2013 | |
| Exhibits | June 13, 2013 | 1 Env Filed |

Date of Remand of Record: May 27, 2014**BRIEFING SCHEDULE**

| | |
|---|---------------------------|
| Appellant | Appellee |
| Lawrence Street Associates, LLC, et al | McCray, Lopez |
| Brief | Brief |
| Due: August 22, 2013 | Filed: August 21, 2013 |
| | Due: September 20, 2013 |
| | Filed: September 18, 2013 |

Reproduced Record
 Due: August 22, 2013 Filed: August 21, 2013

DOCKET ENTRY

| Filed Date | Docket Entry / Representing | Participant Type | Filed By |
|-----------------------|---|------------------|---|
| April 17, 2013 | Notice of Appeal Docketed | Appellant | Lawrence Street Associates, LLC, et al |
| April 17, 2013 | Docketing Statement Exited (Civil) | | Bramblett, Karen Reid |
| April 29, 2013 | Docketing Statement Received | Appellant | Lawrence Street Associates, LLC, et al |
| June 13, 2013 | Trial Court Record and Opinion Received | | Philadelphia County Court of Common Pleas |
| July 11, 2013 | Application for Extension of Time to File Brief - First Request | Appellant | Lawrence Street Associates, LLC, et al |

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1055 EDA 2013

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DOCKET ENTRY

| Filed Date | Docket Entry / Representing | Participant Type | Filed By |
|--------------------|--|------------------|--|
| July 12, 2013 | Order Granting Application for Extension of Time to File Appellant Brief | | Per Curiam |
| | Comment: until 8/22/13 | | |
| August 21, 2013 | Appellant's Brief Filed | Appellant | Lawrence Street Associates, LLC, et al |
| August 21, 2013 | Reproduced Record Filed | Appellant | Lawrence Street Associates, LLC, et al |
| August 21, 2013 | Reply Letter(s) Printed | | Bramblett, Karen Reid |
| August 29, 2013 | Reply Received (Argument) Lawrence Street Associates, LLC, et al | Appellant | Toppin, Sherman Cordelle |
| September 18, 2013 | Appellee's Brief and Supplemental Reproduced Record Combined Filed | Appellee | McCray, Lopez |
| | Comment: w/disc | | |
| October 15, 2013 | Argument Letter Sent | | O'Connor, Jr., Charles E. |
| October 21, 2013 | Acknowledgement of Argument Notice Lawrence Street Associates, LLC, et al | Appellant | Toppin, Sherman Cordelle |
| October 25, 2013 | Acknowledgement of Argument Notice McCray, Lopez | Appellee | LaRosa, Joseph Charles |
| April 15, 2014 | Affirmed | | Musmanno, John L. |
| May 27, 2014 | Remitted | | Seletyn, Joseph D. |

SESSION INFORMATION

Journal Number: J-A30036-13
 Consideration Type: Oral Argument - Panel
 Listed/Submitted Date: November 13, 2013

Panel Composition:

The Honorable Kate Ford Elliott
 The Honorable David N. Wecht
 The Honorable John L. Musmanno

President Judge Emeritus
 Judge
 Judge

DISPOSITION INFORMATION

Final Disposition: Yes

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1055 EDA 2013



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DISPOSITION INFORMATION

| | | | |
|-----------------------|----------------------|---------------------|-------------------|
| Related Journal No: | J-A30036-13 | Judgment Date: | April 15, 2014 |
| Category: | Decided | Disposition Author: | Musmanno, John L. |
| Disposition: | Affirmed | Disposition Date: | April 15, 2014 |
| Dispositional Filing: | Memorandum | Filing Author: | Musmanno, John L. |
| Filed Date: | 4/15/2014 12:00:00AM | | |

REARGUMENT / RECONSIDERATION / REMITTAL

Filed Date:
Disposition:
Disposition Date:
Record Remittal: May 27, 2014